

TTAB

James A. Zellinger
Trademark Counsel

Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, NC 27409

syngenta

Tel 336-632-7835
Fax 336-632-2012
e-mail:
jim.zellinger@syngenta.com

July 12, 2005

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

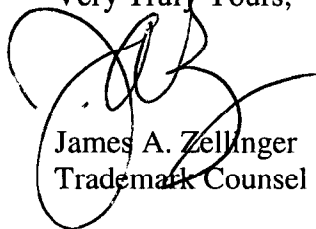
Re: *Toyota Jidosha Kabushiki Kaisha t/a Toyota Motor Corporation, and Toyota Motor Sales, U.S.A., Inc., v. Syngenta Participations AG.*
Consolidated Opposition Nos: 157,206 & 159,578

Dear Sir or Madam:

Please find enclosed APPLICANT'S OBJECTION TO OPPOERS' REQUEST FOR ENTRY OF PROTECTIVE ORDER AND TO RESCHEDULE TESTIMONY PERIODS pertaining to the above-referenced consolidated opposition. Please file in conjunction with the same.

Thank you for your assistance with this matter.

Very Truly Yours,



James A. Zellinger
Trademark Counsel

JAZ/sk
encl.



07-15-2005
U.S. Patent & TMOtc/TM Mail Rcpt Dt. #72

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|--------------------------------------|---|-------------------------|
| TOYOTA JIDOSHA KABUSHIKI KAISHA |) | Opposition No. 157, 206 |
| d/b/a TOYOTA MOTOR CORPORATION, |) | Serial No. 78/145,546 |
| |) | Mark: Lexus |
| and TOYOTA MOTOR SALES, U.S.A., INC. |) | |
| |) | |
| Opposers |) | |
| |) | CONSOLIDATED OPPOSITION |
| |) | |
| |) | |
| v. |) | Serial No.: 78/185,538 |
| |) | Filed: Nov. 15, 2002 |
| |) | Mark: LEXXUS |
| |) | |
| |) | |
| SYNGENTA PARTICIPATIONS AG |) | |
| |) | |
| Applicant. |) | |

**APPLICANT'S OBJECTION TO OPPOSERS' REQUEST FOR ENTRY OF
PROTECTIVE ORDER AND TO RESCHEDULE TESTIMONY PERIODS**

Applicant, Syngenta Participations AG, objects to Opposers' requests for entry of a protective order and to reset the testimony period. On March 11, 2005, this Board issued a specific order directing the parties to agree upon a protective order and confidentiality agreement by March 31 or execute the Board's standard protective order. Opposers have ignored and failed to comply with said Order and have failed to both execute the Board's form as undertaken by Applicant and has failed to produce any materials pursuant to said executed agreement as required by the Board's Order.

1. Repeated Request By Opposers

Due to Opposers wilful non-compliance and complete failure to follow the specific order of this Board, Applicant previously moved this Board to enter said agreement and protective order that had been executed by Applicant as ordered by the Board. Opposers responded, refusing to follow the Board's Order, refusing to execute the Board's agreement, and filed an objection to Applicant's motion to enter the Board's ordered agreement, seeking entry of Opposers' "take it or leave it" agreement. This is merely a second and repetitive attempt by Opposers to submit the same argument as previously submitted in their response to the submission of the executed agreement by Applicant.

2. The Board's Order

The Board was quite clear in its instructions, upon which Applicant relied, that "the parties have twenty days to put in place *a* protective agreement [NOT Opposers' protective agreement] or the Board *will* impose its own protective agreement" (at pg.3). Applicant has been unable to accept Opposers' draft and the parties have not reasonably attempted to negotiate a mutually acceptable draft. (See Applicant's Motion For Protective Order, attached hereto as Exhibit A). The Order is clear and does not provide for reargument. It was not compulsory that Applicant accept Opposers' draft. It did not find Opposers' draft acceptable but found Applicant's additions unnecessary. The Board did not enter Opposers' draft as its Order but issued a clear choice. Applicant has followed the Board's order and instructions and has executed the confidentiality agreement.

3. More of Opposers' Dilatory Conduct And Obstructionistic Tactics

It has been previously established and now well established that Opposers are actively delaying and obstructing the current oppositions as discussed in more detail in Applicant's response to Opposers' earlier requests for a protective order and Opposers' request for consolidation. Opposers are again employing those tactics and challenging the clear language and instructions of the Board.

Pursuant to the Order, as of March 31, a protective agreement should have been in place, by agreement or by using the Board's standard agreement, and discovery resumed.

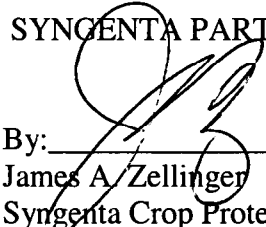
4. Conclusion

Applicant would move this Board deny Opposer's request on the grounds that this is an improper second 'bite at the apple' to argue this issue and one that has already been addressed in the Board's Order of March 11, 2005. It is well warranted that the Board order Opposers to comply with the Board's Order of March 11, 2005.

WHEREFORE, Opposers' request should be denied its entirety.

Respectfully submitted,

SYNGENTA PARTICIPATIONS AG

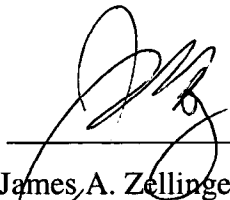
By: 
James A. Zellinger
Syngenta Crop Protection, Inc.
410 Swing Road
Greensboro, North Carolina 27409
Tele. 336-632-7835
Fax. 336-632-2012

CERTIFICATE OF SERVICE

I, JAMES A. ZELLINGER, do hereby certify that I have mailed a copy of the above and foregoing APPLICANT'S OBJECTION TO OPPOSER'S Motion For Protective Order to the attorney of record as listed below by placing a copy of same in the U. S. Mail, properly addressed and postage prepaid, to:

David J. Kera
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

on this the 12 th day of July, 2005.



James A. Zellinger
Syngenta Crop Protection Corp.
410 Swing Rd.
Greensboro, N.C. 27409

EXHIBIT 1

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

MAR 17 2005

Mailed: March 11, 2005

Opposition Nos. 91157206
91159578

Toyota Jidosha Kabushiki
Kaisha, t/a Toyota Motor
Corporation, and Toyota Motor
Sales, U.S.A., Inc.

v.

Syngenta Participations AG¹

Linda Skoro, Interlocutory Attorney

This case now comes up on the parties' motion for entry of a protective order, filed October 1, 2004, by opposer and filed November 19, 2004, by applicant². As the dispute continues, opposer filed another motion on March 1, 2005.

The parties are unable to agree to one specific provision in an otherwise complete protective agreement. The controversial sentence appears to be: "Material in evidence in this proceeding only upon consent of the other party or party not creating said deletions." Applicant

¹ Applicant is advised that it needs to include the opposition proceeding numbers in its caption to avoid delay in having its papers associated with the file.

² Opposers' motion to strike applicant's surreply, filed December 17, 2004, is hereby granted and applicant's motion to add exhibits to its surreply, filed December 17, 2004, is hereby denied as moot.

wants this language added to the sentence that reads:

"Deletions made from any material in accordance with the terms of this protective order shall not affect the admissibility of any such material in evidence in this proceeding." Applicant is concerned that without this controversial sentence, admissibility of confidential material will be affected, in that applicant may be forced to waive its rights to object to the admissibility of materials produced by opposers. Applicant requests either complete deletion of the entire paragraph or inclusion of its controversial sentence.

Opposers' position is that "if a party offers in evidence only part of a confidential document produced by an adverse party, the remedy is not to object to admissibility, but to offer the entire document." The Board agrees.

The Federal Rules of Civil Procedure and Trademark Rule 2.122 govern admissibility of evidence. In similar matters, namely non-confidential evidence, the rules allow a party to enter any other portion of an admitted document if it believes that the partial admission, by its opponent, has been unfairly redacted. See 37 CFR § 2.120(j)(4) & (5). In such a circumstance, the appropriate response is submission of additional material, in this case as confidential, and not an objection to its admissibility, or its designation as

confidential. Any objection to admissibility is decided at final hearing. See TBMP § 702.02(c) (2d ed. rev. 2004).

Accordingly, applicant's controversial sentence is unnecessary. The parties have TWENTY days to put in place a protective agreement, or the Board will impose its own protective agreement that is set out in the appendix to the Board's manual of procedure and on the Board's website.

The Board now turns to opposers' most recent filing involving the continued request by applicant for opposers to produce copies of third-party litigation documents. Such information is discoverable. However, the only information which must be provided with respect to a legal proceeding is the names of the parties thereto, the jurisdiction, the proceeding number, the outcome of the proceeding, and the citation of the decision (if published). See *Interbank Card Ass'n v. United States National Bank of Oregon*, 197 USPQ 127, 128 (TTAB 1975) and *Johnson & Johnson v. Rexall Dug Co.*, 186 USPQ 167, 172 (TTAB 1975). Accordingly, opposers' motion is granted to the extent it does not have to produce copies of documents, but need only identify relevant litigation.

The trial dates are reset, including discovery, to accommodate the parties' supplementing of their responses

after the protective agreement is in place³. The trial dates are reset as follows:

| | |
|--|-------------------|
| Discovery period to close: | 5/15/2005 |
| 30-day testimony period for party in position of plaintiff to close: | 8/13/2005 |
| 30-day testimony period for party in position of defendant to close: | 10/12/2005 |
| 15-day rebuttal testimony period to close: | 11/26/2005 |

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

.oOo.

³ While applicant objected to the extension of the discovery period, claiming it was a dilatory tactic on the part of opposer, it states that there are still many outstanding discovery responses.